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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,591	11/28/2000	Edward J. Dalgewicz III	04756.00006	5236

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Banner & Witcoff, Ltd.  
1001 G Street, N.W.  
Washington, DC 20001-4597

EXAMINER
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MADSEN, ROBERT A

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/26/2002

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/722,591

Applicant(s)

DALGEWICZ, EDWARD J.

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-79 is/are pending in the application.
- 4a) Of the above claim(s) 13-21, 30-37 and 48-77 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 22-29, 38-47, 78, 79 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4, 7. 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

The Amendment filed June 7, 2002 has been entered. Claims 22,30,38 have been amended. Claims 78 and 79 have been added.

### ***Election/Restrictions***

In light of newly amended claims 22,30, and 38, the restriction requirement between Groups I, II, and III is hereby withdrawn, but the species election requirement is maintained. New claims 78 and 79 are also included in the Group I/II/III. Applicant's election of the Group I/II/III (i.e. Claims 1-56, 78 and 79) with a species election of a co-polymer or ter-polymer of ethylene and a glycidyl acrylate for the second layer in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement between the amended Group I/II/III (i.e. Claims 1-56, 78 and 79) and Groups IV (claims 57-67) and V (claims 68-77), the election of Group I/II/III with the species selection of co-polymer or ter-polymer of ethylene and a glycidyl acrylate for the second layer has been treated as an election without traverse (MPEP § 818.03(a)). Claims 57-77 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, and claims 13-21,30-37, and 48-77 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a non-elected species (i.e. a co-polymer or ter-polymer of ethylene and a maleic anhydride for the second layer). Claims 1-12,22-29,38-47,78, and 79 will be examined.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent. The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1,2,4 -10,39,40,42,43,78 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kojima et al. (US 4737548). See Column 6, lines 27-37, Column 2, lines 27-63, Column 8, lines 47-58 , and Examples.

Claims 1-10,39-43,78 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kojima et al. (US 4656094). See Column 2, line 4 to Column 3, line 5, Column 3, line 48 to Column 4, line 21, Column 7, lines 32-46.

Claims 1,2,4-9,11,12,39,40,42-44,78 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Schneider et al. (US 6333094 B1). See Column1, lines 10-29, Column 3, lines 24-38, Column 4, lines 24-41 , Figures, and Examples.

Claims 1,2,4,5,39,40,42,43,45,46 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Wakabayashi et al. (US 6355336 B1). See Column 2, lines 21-40 Column 4, lines 20-30 and lines 54-58, Column See Column 5, lines 1-43, Column 7, lines 49-57, Column 8, lines 1-43, Examples.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 22-29, and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kojima et al. (US 4656094) as applied to claims 1-10,39-43,78 above, further in view of Yamada et al (US 5695839), Rosato et al. (Concise Encyclopedia of Plastics), and Schneider et al. (US 6355336 B1).

Regarding claims 22,27,28,29, and 79, Kojima et al. teach a multi-layer structure having improved strength with PET (which may be biaxially oriented) / ethylene-glycidyl acrylate /HDPE for various food application including wrap films and bottles (Column 7, line 32-48). Kojima et al. are silent in teaching any particular thickness for each layer or a particular stretch ratio.

With respect to layer thickness, Yamada et al. also teach food containers comprising a biaxially oriented polyester film / ethylene-glycidyl acrylate/HDPE structure for holding liquids. Yamada et al. teach a biaxially oriented polyester film of 100-600

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microns (i.e. within 10-20 mils as recited in claims 22,27 and 79) attached to a HPDE layer of 5-150 microns (within 1-5 mils recited in claims 22,29, and 79) an adhesive layer comprising an ethylene-glycidyl acrylate copolymer with a thickness of 3-30 micron, and ( within the 0.2-1.5 mils recited in claims 22,28,79)(Column 5, lines 20-67, Column 9, lines 52 to Column 10, lines 1-20). Therefore, because both Yamada et al. and Kojima et al. teach food containers comprising the same multi-layer structure, it would have been obvious to modify Kojima et al. and include the thickness taught by Yamada et al.: a PET layer thickness of 10-20 mils as recited in claims 22,27 and 79, a HPDE layer of 1-5 mils recited in claims 22,29, and 79, and an ethylene-glycidyl acrylate copolymer of 0.2-1.5 mils as recited in claims 22,28,79. One would have been substituting one type of food container form for another made from the same multi-layer structure.

With respect to stretch ratio, the particular stretch ratio obtained depends on the method used for forming as well as the particular material used. Rosato et al. teach a pressure forming method, for example, on *average* the ratio is 3 to 1 (i.e. the average value as well as those lower do fall within the recited range of 1.5 –3 to 1 of claim 22) and the particular types of materials used also have an impact on stretch ratio anywhere from 2.5-10: 1 (Pages 292, and 392). Furthermore, Wakabayashi et al. are relied on as evidence of the conventionality stretch ratio of the same materials taught by Kojima et al. with a stretch ratio of 2-6: 1 in the machine direction and 0-3 in the transverse direction (Column 7, lines 27-38). Therefore, to obtain an area stretch ratio of 1.5-3 to 1 would have been an obvious result effective variable of the particular method select

in forming and type of plastic selected. Since it was known that the average stretch ratio obtained by pressure forming is 3:1 and a multi-layer film using the same materials as Kojima et al. had a stretch ratio of 2-6: 1 in the machine direction and 0-3 in the transverse.

Regarding claims 23-26, Kojima et al. teach ethylene/glycidyl methacrylate copolymer as recited in claim 23, co-polymers as recited in 24, PET copolymer as recited in claim 25, and HDPE as recited in claim 26 (Column 2, line 4 to Column 3, line 5, Column 3, line 48 to Column 4, line 21).

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kojima et al. (US 4656094) as applied to claims 1-10,39-43,78 above, further in view of Brady et al. (US 5916615).

Kojima et al. teach food film and food packaging with low permeability to oxygen , carbon dioxide and flavors (Column 1, lines 5-23), but are silent in teaching having an elastic polyethylene cover in a modified atmosphere. Brady et al. are relied on as evidence of the conventionality of using a multi-layer package that has low permeability to oxygen , carbon dioxide and flavors in combination with a polyethylene containing cover for a modified atmosphere (Column 7, line 62 to Column 9, line 31, Examples).

Therefore, because Brady et al. and Kojima et al. both teach multi-layer packaging with the same barrier properties, it would have been obvious to combine the package of Kojima et al. with a lid stock of polyethylene using modified atmosphere packaging, and one would have been substituting one form of multi-layer package for

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another for the same purpose: providing low permeability to oxygen , carbon dioxide and flavors.


### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Yokota et al. (US 63961402 B1) and Kawachi et al. (US 6183863 B1) also teach multi-layer packages of similar compositions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9310 for regular communications and (703)872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
August 21, 2002

  
MILTON I. CANO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700